

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAFAEL CASAS,

No C-08-3900 TEH (PR)

Petitioner,

v.

ORDER TO SHOW CAUSE

M. EVANS, WARDEN,

Respondent.

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Petitioner, a state prisoner incarcerated at Salinas Valley State Prison in Soledad, California, has filed a pro se Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 challenging a judgment of conviction from Santa Clara County Superior Court.

I

Following a court trial, Petitioner was convicted of attempted second degree murder and the court found true personal use of a deadly weapon, criminal street gang, and prior prison term enhancements. On July 24, 2006, the trial court sentenced

Petitioner to 15 years in state prison.

On August 2, 2007, the California Court of Appeal affirmed the judgment of the trial court. Doc. # 1, Ex. A. On November 14, 2007, the California Supreme Court denied review. Doc. # 1, Ex. B.

## II

This Court may entertain a Petition for a Writ of Habeas Corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id. § 2243.

Petitioner seeks federal habeas corpus relief by raising the following three claims: (1) a denial of his right to a fair trial and due process because the evidence was insufficient to support his conviction for attempted second degree murder; (2) a denial of his Sixth Amendment right to effective assistance of counsel; and (3) a denial of his right to a fair trial and due process because the evidence was insufficient to support the criminal street gang enhancement. Liberally construed, these claims appear cognizable under § 2254 and merit an Answer from Respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

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III

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this Order and the Petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this Order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within 60 days of the issuance of this order, an Answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a Writ of Habeas Corpus should not be granted. Respondent shall file with the Answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the Petition.

If Petitioner wishes to respond to the Answer, he shall do so by filing a Traverse with the Court and serving it on Respondent within 30 days of his receipt of the Answer.

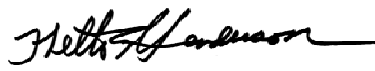
3. Respondent may file a Motion to Dismiss on procedural grounds in lieu of an Answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on Respondent an Opposition or Statement of Non-Opposition within 30 days of receipt of the motion, and Respondent shall file with the Court and serve on Petitioner a Reply within 15 days of receipt of any Opposition.

4. Petitioner is reminded that all communications with

1 the Court must be served on Respondent by mailing a true copy of the  
2 document to Respondent's counsel. Petitioner also must keep the  
3 Court and all parties informed of any change of address.

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6 IT IS SO ORDERED.

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8 DATED 04/01/09

  
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THELTON E. HENDERSON  
United States District Judge

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